

THE DRAIN CODE OF 1956 (EXCERPT)
Act 40 of 1956

280.72 Board of determination; appointment, qualifications, and compensation of members; location of meeting; failure or refusal to serve; informing legislator of persons appointed; notice of meeting; publication; affidavit of mailing; effect of failure to receive notice; expenses of notice; election of chairperson and secretary; determination of necessity of proposed drain; statement; orders of board; cost; notice; appeal; duties of commissioner.

Sec. 72. (1) As soon as practicable after the filing of a petition, the commissioner authorized to act on the petition, if not disqualified under section 381 to make the apportionment of benefits, may appoint a board of determination composed of 3 disinterested property owners. If the commissioner is disqualified or chooses not to appoint the board of determination, the commissioner shall immediately file a copy of the petition with the chairperson of the county board of commissioners, together with a statement signed by the commissioner, showing that he or she is disqualified or chooses not to act in appointing a board of determination. Upon receiving a copy of the petition and certificate, the chairperson of the county board of commissioners, if not privately interested, as soon as practicable, shall appoint a board of determination composed of 3 disinterested property owners and shall immediately notify the drain commissioner of the names and addresses of those appointed. If the chairperson of the board of commissioners has a private interest in the proceedings, the drain committee of the county board of commissioners shall appoint the board of determination. Members of boards of determination shall be residents of the county but not of a township, city, or village affected by the drain, and may not be members of the county board of commissioners of the county. A meeting of the board of determination shall be called within the drainage district at a convenient place to be designated by the drain commissioner. The board of determination meeting also may be held at a public building within the city, village, or township in which the drain is located. If 1 of those appointed to the board of determination fails or refuses to serve, the drain commissioner shall appoint a successor. The per diem compensation, mileage, and expenses of a member of the board of determination shall be the same as the county board of commissioners of the county. In counties where commissioners are not paid on a per diem basis the compensation, mileage, and expenses shall be fixed by the drain commissioner. The members of the board of determination shall not receive more than 1 per diem for a day no matter how many separate matters are considered on that day. Upon request, the county drain commissioner shall inform in writing the requesting state legislator who represents that portion of the area in which the proposed drain improvement is to be constructed of the names and addresses of the persons appointed to a board of determination.

(2) The drain commissioner shall give public notice of the time, date, and place of the meeting of the board of determination in the manner required by the open meetings act, Act No. 267 of the Public Acts of 1976, as amended, being sections 15.261 to 15.275 of the Michigan Compiled Laws, and by publication in a newspaper of general circulation in the county at least 10 days before the meeting. Notice also shall be served on the county clerk and on the clerk of each township, city, and village in the district, personally or by registered mail, at least 10 days before the meeting. The drain commissioner also shall send notice, by first class mail, of the time, date, and place of the meeting, to each person whose name appears on the last city, village, or township tax assessment roll as owning land within the special assessment district, at the address shown on the roll. If an address does not appear on the roll, a notice need not be mailed to the person. The drain commissioner shall make an affidavit of the mailing and shall recite in the affidavit that the persons to whom the notice was mailed constitute all of the persons whose names and addresses appear upon the tax rolls as owning land within the particular special assessment district. The affidavit shall be conclusive proof that notice was mailed to each person to whom notice is required to be mailed pursuant to this section. The failure to receive a notice by mail shall not constitute a jurisdictional defect invalidating a drain proceeding or tax, or both, if notice has been sent by first class mail as provided in this section. Expenses of notification shall be paid by the drainage district when created.

(3) At the time and place fixed in the notice the board of determination shall meet, elect a chairperson and secretary, and proceed to determine the necessity of the proposed drain and whether the drain is conducive to public health, convenience, or welfare. The board of determination, if it considers it necessary, shall require the county drain commissioner to obtain from the county treasurer a statement showing the amount of taxes and special assessments levied against the land in the proposed drainage district on the tax rolls for the immediately preceding 3 years and the amount of the taxes and assessments remaining unpaid. If it appears from the statement that 25% or more of the taxes are unpaid on the lands, further action shall not be taken. After hearing the evidence offered, the board of determination shall make its determination on the necessity of the drain and whether the drain is conducive to public health, convenience, or welfare. If the board of determination finds, by a majority vote of the members, that the drain is not necessary and conducive to

public health, convenience, or welfare, the board of determination shall file with the commissioner an order dismissing the petition, and a further petition for the drain shall not be entertained within 1 year after the determination. If the board of determination, by a majority vote, finds the drain proposed to be necessary and conducive to the public health, convenience, or welfare, the board of determination shall make an order to that effect and file the order with the commissioner. If the board of determination finds that a portion of the construction of the proposed drain is necessary for the protection of the public health in 1 or more cities, villages, and townships, the order shall set forth the determination giving the names of the municipalities receiving benefit for health. If the board of determination determines that the whole cost, except that to be levied against state or county highways for highway benefits, is necessary for the public health, the cost shall be levied against the townships, villages, and cities at large, and it shall not be necessary, in a subsequent order or notice to describe or refer to land included in or comprising the drainage district. Upon filing of the order of determination by the board of determination, the drain commissioner, within 10 days of filing, shall notify each municipality that it is liable to pay a percent of the cost of construction of the drain by reason of benefits at large for public health. The governing body of the township, city, or village, within 20 days after receipt of the notification by registered mail from the drain commissioner, may appeal the order of the board of determination to the probate court having jurisdiction in the county in which the township, city, or village is located. Upon receipt of the order of the board of determination, and if an appeal has not been taken by a municipality to the probate court, the commissioner, after 20 days, shall make his or her first order of determination in writing, giving the name or number of the drainage district. The commissioner shall establish the commencement, route, terminus, and type of construction of the drain, a copy of which order he or she shall file, within 15 days, in his or her office. If an appeal is taken to the probate court by a municipality, the commissioner shall file his or her first order of determination after the appeal procedures are terminated.

History: 1956, Act 40, Imd. Eff. Mar. 28, 1956;—Am. 1957, Act 61, Imd. Eff. May 20, 1957;—Am. 1963, Act 215, Imd. Eff. May 17, 1963;—Am. 1963, Act 228, Imd. Eff. Sept. 6, 1963;—Am. 1965, Act 138, Eff. Mar. 31, 1966;—Am. 1969, Act 285, Eff. Mar. 20, 1970;—Am. 1970, Act 111, Eff. Apr. 1, 1971;—Am. 1972, Act 302, Imd. Eff. Dec. 22, 1972;—Am. 1978, Act 235, Imd. Eff. June 15, 1978;—Am. 1980, Act 120, Imd. Eff. May 21, 1980;—Am. 1987, Act 60, Imd. Eff. June 25, 1987.

Popular name: Act 40